
(1986) 03 MAD CK 0012
In the Madras High Court
Case No : Criminal Appeal No. 327 of 1981

State	Vs	APPELLANT
S. Seshamal Pandia and Others		RESPONDENT

Date of Decision : 14-03-1986

Acts Referred:

Companies Act, 1956 — Section 162, 209A(2), 209A(6), 209A(8)

Citation : (1986) 60 CompCas 889

Hon'ble Judges : V. Bhaskaran Nambiar, J

Bench : Single Bench

Judgement

Bhaskaran, J.—This appeal has been filed against the order of acquittal passed by the Third Metropolitan Magistrate, Madras, of the three

directors of the United Pharma (India) P. Ltd. on a complaint filed by the Assistant Registrar of Companies, Madras, under sections 209A(2) and

209A(8) of the Companies Act.

2. The complaint has been laid by the Assistant Registrar of Companies against the three directors, the respondents herein under sections 209A(2)

and 209A(8) of the Companies Act, alleging that the respondents are the directors of the above-mentioned company, that during the inspection of

the company at its registered office on March 15, 1975, March 17, 1975, and March 19, 1975, certain irregularities were found by the Assistant

Registrar of Companies, that subsequently a report was sent to the Government of India u/s 209A(6) of the Companies Act, and that, thereafter,

exhibit P-1 notice was sent to the directors of the company on August 23, 1975, pointing out the omission and calling upon the directors to rectify

the omissions and to submit a report. Several letters were exchanged and finally the notice, exhibit P-21, dated December 29, 1976, was sent

calling upon them to submit their report within a period of 15 days. In spite of the notice to rectify the irregularities, as the directors did not comply with the final notice also, the complaint was laid on August 10, 1977.

3. On the evidence, the learned Magistrate found that the prosecution has proved the guilt of the accused of the offence u/s 209A(2) and section 209A(8) of the Companies Act, but dismissed the complaint on the question of limitation.

4. The defence raised a contention that the complaint is barred by limitation, that the complaint should have been filed within one year from the date

of the last inspection, that is, on March 19, 1975, or in any event within fifteen days from the issue of exhibit P-1 notice, the time given in the

notice, since the offence is punishable with the sentence of imprisonment up to a period of one year. The contention on behalf of the prosecution

was that limitation would start only from the expiry of the fifteen days' time given in the final notice under exhibit P-21. The learned Magistrate

negated the contention of the prosecution and held that limitation would start from the expiry of 15 days from the date of the first notice under

exhibit P-1. Admittedly, since the complaint is filed more than a year after the expiry of fifteen days from exhibit P-1 notice dated August 23,

1975, the learned Magistrate held that the complaint is barred by limitation and, therefore, dismissed the complaint. In the appeal, the learned

public prosecutor submitted that the order of acquittal is not sustainable and reiterated the same contentions. The learned public prosecutor

submitted that since the accused had been given final notice giving them opportunity to rectify the mistakes within a specific period mentioned in the

notice, limitation would start only from the date of the expiry of the time mentioned in the final notice. I do not agree with the learned public

prosecutor. In fact, the learned Magistrate considered the point whether the offence is a continuing one or not and found that it is not a continuing

offence after referring to sections 162 and 209A(2) of the Companies Act. u/s 162 of the Companies Act, a daily fine of Rs. 50 is prescribed for

every day's default, whereas in this case u/s 209A(2) of the Companies Act, minimum sentences of fine of Rs. 5,000 is provided. The learned

public prosecutor did not contend that the offence is a continuing one, before me. Therefore, when the offence is not a continuing one, it has to be

taken that the offence has taken place on the particular date on which it was committed and not subsequent to the same and the period of limitation

cannot be extended by the prosecution as they choose. For violation of section 209A(2) of the Campaigns Act, for which the complaint has been

laid, punishment is provided u/s 209A(8). Section 209A(2) says that it shall be the duty of every director, other officer or employee of the

company to produce to the person making inspection all such books of account and other books and papers of the company in his custody or

control. So, the first part of it regarding inspection makes it clear that the officer in charge of the company or the director is expected to produce all

the records called for at the time of inspection. If action has been taken on the basis of the allegation that at the time of inspection the account

books were not produced, the default must be deemed to have been committed at the time of inspection itself. Then the period of limitation would

start from that day itself. In the same clause, it is also provided that the inspecting authority may also call upon the directors to furnish such

statement, information or explanation relating to the affairs of the company within such time and at such place as he may specify. Based on this

provision, the Assistant Registrar of Companies pointing out the omissions has called upon the directors of the company under exhibit P-1 to

rectify the mistake and also produce the necessary documents. It is significant to note that section 209A(2) does not say that the inspecting

authority may call upon them (directors) to give information or produce documents within such time or within the extended time. It only says that

the inspecting officer may require them to give information ""within such time"". In other words, the time fixed by the Assistant Registrar in the first

notice itself, within which the directors should comply and rectify the mistakes, is the criterion. The Assistant Registrar has no power to extend the

time under the section. Therefore, if the directors did not comply with the demand within the period prescribed in the first notice, exhibit P-1, the

offence must be deemed to have been committed and, therefore, limitation would start only from that date. The subsequent letters or the final letter

given by the Assistant Registrar giving the opportunity to the directors to rectify the mistake will not extend the period of limitation. Therefore, I

entirely agree with the learned Magistrate that the period of limitation starts from the expiry of the period mentioned in exhibit P-1 and the

complaint is barred by limitation since admittedly the complaint is filed one year after the expiry of fifteen days" time given under exhibit P-1.

Therefore, the complaint has been rightly dismissed.

5. In the result, the appeal fails and the same is dismissed.